IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 368 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYDEEP H KOTHARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 368 of 2002

MR DA CHAUDHARI for applicant.

Mr.BD. Desai, APP for Respondent-State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/10/2002

ORAL JUDGEMENT

Rule. Learned A.P.P.Mr. Desai waives service of notice of rule. By consent of parties, the matter is

taken up for final hearing today.

2. The revisioner is aggrieved by an order passed by the Metroplitan Magistrate, Court no.11, Ahmedabad, below Exh.3 in Criminal Case no.987/2001 on August 28, 2002. The said application was given by the applicant for his discharge claiming that there is no evidence against him for the offences alleged to have been committed by him, and hence, this Revision Application.

3. The brief facts of this case can be stated thus:

A First Information Report came to be lodged by P.S.I. (Immigration), Mr.K.J.Kotra with DCB Police Station, Ahmedabad, on 11-8-2001 at about 1830 hours against one Satishkumar Chinubhai Gheewala and the person occupying counter no.2 of Sahjanad World Travels. As per that First Information Report, the accused no.1 was holding a passport and the accused no.2 i.e. person sitting in counter no.2 of Sahjanad World Travels by charging money affixed fake arrival stamp on the passport indicating his arrival at Bombay Airport and that is how the accused persons committed offences punishable under Sections 491, 465, 467, 468, 471 and 114 of the Indian Penal Code and Section 12 of the Passport Act.

4. After the investigation, charge-sheet came to be filed against passport holder Satishkumar Chinubhai Gheewala and the present revisioner on premises that the person sitting at counter no.2 of Sahjanand World Travels indicated in the F.I.R. was the present revisioner.

5. Learned Advocate Mr. Raju submitted that if the charge-sheet papers are perused, there is not an iota of admissible evidence against the petitioner and despite this, application for discharge of the petitioner has been rejected by the learned Metropolitan Magistrate. Mr. Raju submitted that the revisioner has annexed copies of all the relevant documents. He, therefore, urged that this Revision may be allowed.

6. Learned Additional P.P. Mr. Desai who has also been supplied with the copies of the charge-sheet papers has drawn my attention to the F.I.R. and submitted that the revisioner had charged Rs.65,000/- from the passport holder. The amount is more than the airfare , and therefore, by necessary implication, it can be inferred that the revisioner charged money for getting fake arrival stamp affixed on the passport. He, therefore, urged that it is a matter of evidence and hence, the revision may be rejected.

7. This Court has considered the charge-sheet papers in light of the contentions raised by rival sides. It appears from the charge-sheet papers that the F.I.R. is lodged by P.S.I. and the contents thereof are based on the information received by the complainant from accused no.1 Satishkumar Chinubhai Gheewala. There is no evidence to indicate that the person sitting at counter no.2 of Sahjanand World Travels indicated in the F.I.R. is the revisioner himself and none else. No test identification parade has been carried out to fix the identity of the revisioner. The statement of Shri P.P.Bhatt, Police Inspector, is also based on the information derived by him from Satishkumar Chinubhai Gheewala which also does not fix the identity of the person with Sahjanand World Travels. As such, there is total lack of admissible evidence to connect the revisioner with the offence, even prima facie. As a necessary implication there is no point in subjecting the revisioner to face the trial. The revision, therefore, deserves to be allowed. The same is allowed. The revisioner is discharged from the offences under Sections 491, 465, 467, 468, 471 and 114 of the Indian Penal Code and Section 12 of the Passport Act in respect of CR no.I 26/2001 with DCB Police Station, Ahmedabad. Rule is made absolute.

(A.L.Dave, J.)

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